

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
SANFORD AIR, INC.)	File No. 0003089325
)	
For Renewal of Aeronautical Advisory Station)	
KUT2, Sanford Regional Airport, Sanford, Maine)	
)	
and)	
)	
TOWN OF SANFORD, MAINE)	File No. 0003122091
)	
For a New Aeronautical Advisory Station at)	
Sanford Regional Airport, Sanford, Maine)	

ORDER

Adopted: March 13, 2008

Released: March 14, 2008

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On June 27, 2007, Sanford Air, Inc. (Sanford Air) filed an application to renew its license for aeronautical advisory (unicom)¹ Station KUT2 at Sanford Regional Airport (the Airport), Sanford, Maine.² On July 26, 2007, the Town of Sanford, Maine (the Town), which owns the Airport, filed an application for a new unicom station at the same location.³ For the reasons set forth below, we shall dismiss Sanford Air's application and process the Town's application.

2. *Background.* Sanford Air's license for Station KUT2 was most recently renewed on July 9, 2002. On May 16, 2007, the Town filed an application for special temporary authority (STA) to operate a unicom at the Airport.⁴ The Town stated that Sanford Air's lease had expired and would not be renewed, and that Sanford Air had been ordered to vacate the premises.⁵ The STA was granted under Call Sign WQGY916 on May 30, 2007.⁶

3. On June 27, 2007, Sanford Air filed the above-captioned application to renew its license. On July 26, 2007, the Town filed the above-captioned application for permanent authorization for a new

¹ Unicom stations provide information concerning flying conditions, weather, availability of ground services, and other information to promote the safe and expeditious operation of aircraft. *See* 47 C.F.R. § 87.213(b)(1).

² FCC File No. 0003089325 (filed June 27, 2007, amended Aug. 20, 2007, Oct. 31, 2007, and Nov. 1, 2007).

³ FCC File No. 0003122091 (filed July 26, 2007).

⁴ *See* FCC File No. 0003031163 (filed May 16, 2007).

⁵ *See* Letter dated May 15, 2007 from Evan R. McDougal, Airport Manager, Sanford Regional Airport, to FCC.

⁶ The STA was renewed on November 7, 2007, conditioned on the outcome of this proceeding. *See* FCC File No. 0003180936 (filed Sept. 24, 2007).

unicom at the Airport.⁷ In addition, the Town, and others, objected to Sanford Air's renewal application.⁸

4. The parties opposing the renewal application emphasize that Sanford Air's operating rights agreement with the Airport has been terminated, and that Sanford Air therefore has lost any legal right to maintain a facility at the Airport.⁹ Granting the renewal application under these circumstances, they argue, would engender confusion and jeopardize aviation safety at the Airport.¹⁰ In response to an inquiry from the licensing staff of the Mobility Division,¹¹ Sanford Air acknowledged that it is not currently authorized to operate on the Airport premises, but stated that it hopes to regain possession of the facility upon the resolution of pending litigation regarding the termination of the lease.¹²

5. *Discussion.* Section 87.215(a) of the Commission's Rules provides that a unicom station and any associated dispatch or control points "must be located on the airport to be served."¹³ The record evidence demonstrating that Sanford Air is no longer authorized to operate on the premises of the Airport therefore requires dismissal of its renewal application. Although Sanford Air says that it retains hope that it will regain access to the Airport premises through the successful prosecution of its civil litigation against the Town, we are unable to renew the license for Station KUT2 on such a conjectural basis.¹⁴ We cannot determine when the litigation will be resolved, whether it will be resolved in Sanford Air's favor, or, if so, what relief would be awarded. We therefore conclude that Sanford Air's inability to provide actual unicom service at the Airport now, and the speculative nature of Sanford Air's hope that it may regain that ability at some indeterminate point in the future, undermine any assertion that it remains

⁷ The Town is requesting authority to operate on frequency 123.075 MHz, asserting that the frequency is less congested in the area of the Airport than the frequency 122.8 MHz, which is currently used at the Airport. On December 14, 2007, the Town filed a request for expedited approval of its application. See Letter dated Dec. 14, 2007 from Evan R. McDougal, Airport Manager, Sanford Regional Airport, to FCC.

⁸ See Letter dated July 30, 2007 (and filed Aug. 2, 2007) from Evan R. McDougal, Airport Manager, Sanford Regional Airport, to FCC (Town Informal Objection). Informal objections against the Sanford Air renewal application were filed by Ann-Marie Walko, President, Wicked Good Aviation Services, Inc., Wiscasset, Maine, on August 2, 2007; James Dougherty, Chairman, Sanford Airport Advisory Committee, on August 2, 2007; James H. Knowles, MAS Hangars, LLC, Durham, New Hampshire, on August 2, 2007 (Knowles Informal Objection); Sue Tholen, Flight Instructor, Southern Maine Aviation, on August 3, 2007; Mark C. Damuth, General Manager, Southern Maine Aviation, on August 5, 2007; and Robert Viscio, Wolfeboro, New Hampshire, on August 6, 2007. An opposition to the Knowles Informal Objection was filed by Leonard Mustacchio, Sanford, Maine, on August 7, 2007.

⁹ The Town has submitted a March 22, 2007 order of the Superior Court, State of Maine, York County, in Civil Action Docket No. AP-07-12, granting in part a motion filed by Sanford Air for stay of writ of possession that stays the writ through June 30, 2007 "to allow Sanford Air ... to vacate the formerly leased premises and land in an orderly fashion," and a May 10, 2007 order of the State of Maine Supreme Judicial Court, in Docket No. Yor-07-198, dismissing Sanford Air's appeal of the Superior Court ruling as interlocutory.

¹⁰ See, e.g., Town Informal Objection at 1 (contending that "a renewal of that license to a former tenant who no longer has any operating rights agreement at the airport is unacceptable and will cause nothing but confusion and possibly safety problems among the flying public").

¹¹ See Notice of Return, Ref. No. 4658089 (Sept. 14, 2007).

¹² See Attachment (filed Nov. 1, 2007).

¹³ See 47 C.F.R. § 87.215(a).

¹⁴ Cf. City of Kirksville, *Decision*, Docket No. 19767, 46 F.C.C. 2d 321, 323-24 ¶ 5 (Rev. Bd. 1974) (holding that, for purposes of comparing competing unicom applicants, an applicant's station location should be deemed to be its current location, rather than the preferable location of a new station that it planned to construct); Northwest Broadcasters, Inc. (KBVU), *Memorandum Opinion and Order*, 3 F.C.C. 2d 571, 572 ¶ 4 (1966) (assuming that current station location was available to new applicant based on owner's stated position that it would terminate the lease, repossess the property, and lease it to whomever is awarded the authority to operate the station).

qualified to provide unicom service under the license for Station KUT2. We therefore direct that Sanford Air's application to renew the license be dismissed, and the Town's application for a new unicom license be processed according to the Commission's rules and policies regarding unicom applications that are not mutually exclusive with any other application.¹⁵

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 1.934 and 87.215 of the Commission's Rules, 47 C.F.R. §§ 1.934, 87.215, that application FCC File No. 0003089325 filed by Sanford Air, Inc. on June 20, 2007, SHALL BE DISMISSED.

7. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 87.215 of the Commission's Rules, 47 C.F.R. § 87.215, that application FCC File No. 0003122091, filed by the Town of Sanford, Maine on July 26, 2007, SHALL BE PROCESSED in accordance with the Commission's Rules and this *Order*.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁵ Section 87.215(b) of the Commission's Rules permits only one unicom station at an uncontrolled airport, such as the Airport. *See* 47 C.F.R. § 87.215(b). The rule states that "[a]t an airport which has a part-time or full-time control tower, RCO [control tower remote communications outlet] or FAA flight service station, the one unicom limitation does not apply" *Id.* The Commission has clarified in a number of different proceedings that its intent has always been to apply the one-unicom-per-airport limitation to any airport which does not have a control tower or RCO *that effectively controls traffic at the airport*, and that the one-unicom limitation accordingly applies to any airport where the airport's unicom frequency serves as the published common traffic advisory frequency (CTAF). *See, e.g.,* Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 01-289, 18 FCC Rcd 21432, 21459 n.211 (2003); Reorganization and Revision of Part 87 of the Rules Governing the Aviation Services, *Notice of Proposed Rule Making*, PR Docket No. 87-214, 2 FCC Rcd 4069, 4070 ¶¶ 11-12 (1987); Starbase Aviation Incorporated, *Order on Reconsideration*, 19 FCC Rcd 21974, 21977 n.25 (WTB PSCID 2004); The Flight Department, *Order*, 18 FCC Rcd 23943, 23945 ¶ 3 (WTB PSPWD 2003); Resort Aviation Services, Inc., *Hearing Designation Order*, WT Docket No. 02-179, 17 FCC Rcd 12816, 12816 n.2 (WTB PSPWD 2002). Station KUT2 is authorized to operate on frequency 122.8 MHz, which also serves as the CTAF for the Airport.